

REMARKS:

In the outstanding Office Action, claims 1-28 and 30 were rejected. Claims 9-22 and 25-29 have been cancelled without prejudice, and claims 23 and 24 are amended herein. Thus, claims 1-8, 23, 24 and 30 are pending and under consideration. No new matter has been added. The rejections are traversed below.

REJECTION UNDER 35 U.S.C. § 101:

Claims 1-8, 9, 15, 22-25 and 30 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. As mentioned above, claims 9, 15, 22 and 25 are cancelled herein.

On page 5 of the outstanding Office Action, the Examiner explained the § 101 rejection, stating, "In order to be in the technological art, the bodies of the claims should incorporate the use of computer hardware or a device regardless of the introduction of computer hardware or device in the preambles of the claims."

Independent claims 1, 23, 24 and 30 all produce a useful, concrete, and tangible result. For example, claim 1 uses "the individually fitted product descriptions... to individually inform the target customers". The apparatus of claim 23 causes the customer-specific "commodity description information to be sent to the target customers". Claim 24 recites sending "the custom commodity description information to the target customer when promoting the promoting commodity to the target customer". Claim 30 recites promoting the promotion product whereby target customers receive "different commodity description information". These useful, concrete, and tangible results further establish patentability.

More specifically, claim 1 recites "An information decision computing apparatus ... comprising ...", and thus, the operations recited in claim 1 are performed by elements of a "computing apparatus" and are not manual processes.

Claim 23 is rejected based on the same reasoning. However, claim 23 also recites components of a "computing apparatus" and similarly recites statutory patentable subject matter.

Claims 24 and 30 recite, "A computer-implemented method". The methods of claims 24 and 30 cannot be manual processes because they are implemented by computer. The Merriam Webster Online Dictionary shows that "manual" means "worked or done by hand and not by machine" (emphasis added). A process implemented by computer is implemented by machine and cannot reasonably be characterized as "manual".

The rejected claims recite features performed by automation, for example, receiving inputted information, searching a transaction history, analyzing a transaction history, referring to a matrix, automatically obtaining information, etc. These are inherently non-manual processes.

The Examiner also indicates that elements such as "a target customer finder ... a transaction tendencies analyzer [etc.] ... represent a software component" and are therefore unpatentable (page 5, lines 13-20) of the Office Action. According to MPEP § 2106 (IV-B-2-a), "If a claim defines a useful machine or manufacture by identifying the physical structure of the machine or manufacture in terms of its hardware or hardware and software combination, it defines a statutory product." Furthermore, the Examiner's rejection itself confirms that a "claimed computer implemented process was within the 'technological art' because the claimed invention was an operation being performed by a computer within a computer" (page 4, lines 5-10).

Thus, it is respectfully submitted that because independent claims 1, 23, 24 and 30 and dependent claims dependent therefrom satisfy the requirements of 35 USC §101, withdrawal of the rejection is requested.

REJECTION UNDER 35 U.S.C. §102(e):

Claims 1-8, 16-20, 22, 24 and 30 were rejected under 35 U.S.C. § 102 as anticipated by U.S. Patent No. 6,026,370 (Jermyn). As mentioned above, claims 16-20 and 22 have been cancelled.

Applicants previously argued that Jermyn does not customize descriptive text. The Examiner answers this argument at pages 32-33 of the Office Action. The Examiner characterizes Jermyn as teaching that "a customer is targeted based on his affinity to the product brand (product) promoted or featured in the particular promotion or theme". The Examiner equates a "product brand" with a "product". However, Applicants respectfully submit that a product is not equivalent to a "product brand". A "brand" is "a class of goods identified by name as the product of a single firm or manufacturer" (Merriam Webster Online Dictionary). Furthermore, brands are not the target of a marketing effort in Jermyn. Rather, a product category or theme is the target of direct marketing.

The claims differ fundamentally from Jermyn. The claims achieve the effect of providing a consumer with useful individually customized "descriptive information" about a particular marketed product. This approach is based on an insight that for certain types of products, for example computers, a consumer's decision will likely be driven by specific product description

information. The presently claimed invention aims to influence consumers by producing customized description information with which a consumer may be better informed. A consumer receives decision-relevant information that is more useful than non-customized information.

In contrast, Jermyn (and Deaton) take a significantly different approach of influencing consumer choice by providing material or valuable incentives. As stated in Jermyn, "The present invention fulfills [a] need", which is "a need for improvement in targeted techniques for distribution of coupons and other incentives". Jermyn completely overlooks the idea of individually customized descriptive information for a particular promotion product. For example, column 3, lines 25-34 of Jermyn, states that "The invention represents a significant advance in the field of automatic generation of purchasing incentives ... In particular, the invention provides for automatic adjustment of a purchasing incentive". As shown at column 4, lines 45-61, an incentive is clearly something valuable such as a discount, a free sample, a credit for a later purchase, a cash discount, etc. An incentive is basically a form of coupon (column 4, lines 45-46).

The Examiner states that "The [incentive] package also includes other printed materials to enhance the purchase incentives. However, the printed materials in Jermyn are for seasonable presentation of the promotion theme and are not customized descriptive information. This is why the other material is added to the mailing packages after the profiles have been used for customization. As shown in Figure 3, Jermyn does not customize the "other material" noted by the Examiner. Figure 3, blocks 74 through 86 show where in Jermyn's process customer profiles are used for customizing. A customer's profile determines the incentive they will get (82, 84, 86). After these steps, the other mailing material is merely merged with the previously customized incentives (the merging does not reference the profiles). By adding the same "descriptive text" to all mailings after the customization process is complete, Jermyn clearly shows that it has completely overlooked the possibility of customizing product description information. This is consistent with Jermyn's stated purpose of customizing incentives, not descriptive information. In sum Jermyn neither teaches nor suggests customization of descriptive product information or text, but rather inserts the same supplemental materials in all mailings to the different customers.

The claims recite features of promoting a particular product. The target customers receive customized or "different" description of the particular product or a commodity (see independent claims 1, 23, 24 and 30). Applicants submit that there is a distinction between a particular product and a product category. At page 32 Examiner appears to acknowledge that

Jermyn looks for customers who have made purchases in the same product category/area. Jermyn markets a selected "product category" or theme. In fact, Jermyn explains that even a product category subset "contains at least two and less than all of the product categories of said product category set". Jermyn also states that customers are identified by the past purchase "of any product contained in said product category subset" (column 10, lines 25-32). Clearly, a product category contains many different products. Jermyn clearly states that it is directed to identifying and marketing to customers based on a product category. In relation to an exemplary product category, Jermyn notes that a product category includes "a wide variety of low-fat foods" (column 6 lines 57-61, emphasis added). In other words, a product category in Jermyn includes a wide variety of products. See also block 72 in Figure 3, where customers are identified based on having purchased "theme products (e.g. low-fat foods)". Jermyn also states that a product category is related to a promotional theme. Jermyn is traversed because it does not teach or suggest finding and marketing to customers based on a particular product.

Jermyn does not disclose promotion of a particular product, finding customers based thereon, or customization of descriptive text therefor. The Examiner argues that in Jermyn "a product theme or the same particular promotion is being targeted". Applicants submit that a "product theme" is not a particular product. Nor is a "particular promotion". A "particular promotion" in Jermyn is a promotion of a selected particular product category among those available (block 68, Figure 3).

At the top of page 7 of the Office Action, the Examiner also argues that "Jermyn teaches a system for ... selecting a product category for promotion (selecting a promotion product in a promoted product category)". The Examiner is stating that Jermyn's selecting of a product category is the same as "selecting a promotion product in a promoted product category". Applicants submit that selecting a category is not the same as selecting a particular product, and contradicts Jermyn's own description of "selecting a product category subset that contains at least two ... product categories" (see column 10, lines 25-28 and numerous other portions).

The lack of customized descriptive text in Jermyn is even more apparent in view of Jermyn's promotion of a category or theme. There is no reason for Jermyn to describe a particular product customer-specifically when it is a general theme or category that is being promoted rather than a particular product.

Figure 3 of Jermyn clearly shows that customers are preselected (block 70) based on demographic information. Then, among the preselected, customers are identified "that have purchased theme products (e.g. low fat foods)". Nowhere does Jermyn disclose comparing

specification information of a particular promotion product to specification information. The only information Jermyn discloses about products is the product category and brand. This is not specification information about a product. For example, in the case of a computer, specification information might include processor type, form factor, etc. Nowhere does Jermyn even mention specifications of a product.

Therefore, withdrawal of the rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. §103(a):

Claims 1-28 and 30 were rejected under 35 U.S.C. § 103 as being unpatentable over Deaton in view of Jermyn. As mentioned above, claims 9-22 and 25-29 have been cancelled.

Regarding the rejections based on Deaton, the Examiner states that all features are found in Deaton, with the exception of "finding a product previously purchased by one or more customers, wherein the product is suitable to be replaced with a promotion product by comparing the specification of the product previously purchased to the specification of the promotion product" (page 10, bottom). However, as shown above, Jermyn discloses selecting a product category or theme for promotion and does not find previously purchased products based on product specification information.

Deaton is directed to preparing lists of customers to be marketed to, and tailoring the incentives to be offered to a customer that is to be marketed to. Deaton discusses two forms of marketing. First, coupons or the like are generated on the fly when a customer buys something at a point of sale (POS). A POS is described as a transaction terminal or register (see, col. 11 to col. 21). Second coupons are generated and mailed to customers that have been placed in a marketing list (see, col. 61, line 34 to col. 62 line 56). The customer marketing lists in Deaton are gradually accumulated during POS transactions. For example, when a customer's purchase is rung up, the customer is added to a list of infrequent shoppers if so identified.

By way of example independent claim 24 recites, "determining transaction tendencies..., where the determined tendencies reflect common general properties of commodities that the target customer has tended to purchase" and "custom fitting a commodity description a commodity description to the transaction tendencies of the target customer by selecting, from among a plurality of commodity descriptions, the commodity description having content that corresponds to the transaction tendencies of the target customer" (claims 1, 23 and 30 also recite similar features).

Therefore, withdrawal of the rejection is respectfully requested.

DEPENDENT CLAIMS:

The dependent claims are deemed patentable due at least to their dependence from allowable independent claims. These claims are also patentable due to their recitation of independently distinguishing features. For example, claim 4 recites that "said transaction tendencies analyzer further comprises a transaction tendencies determiner that determines at least one of the target customer transaction tendency in accordance with at least one product rank listed in the transaction history of the target customer".

Therefore, withdrawal of the rejection of the dependent claims is respectfully requested.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.


Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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